

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA, DAMAN AND DIU

### EXTRAORDINARY

No. 2

#### GOVERNMENT OF GOA, DAMAN AND DIU

Office of the Chief Electoral Officer

Notification  
No. 4-9-71/Elec.

The following Notification No. 82/Goa-HP/1/71 dated 13-4-1973 issued by the Election Commission of India, New Delhi is hereby published for general information.

B. M. Masurkar, Chief Electoral Officer.

Panaji, 23rd June, 1973.

#### Election Commission of India

*Ashoka Road, New Delhi-1, dated the 13th April, 1973  
Chaitra 23 1895 (Saka)*

Notification

No. 82/Goa-HP/1/71 — In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated the 16th March, 1973, of the Court of the Judicial Commission, Goa, Daman and Diu in Election Petition No. 1 of 1971.

Judicial Commissioner's Court Goa, Daman and Diu — Panaji

#### Election Petition No. 1 of 1971

G. Y. Bhandare — Petitioner.

vs

Erasmus de Jesus Jack Sequeira — Respondent.

Shri V. R. Bhandare, Advocate for the petitioner.

Shri Porus Mehta Sr. Counsel with Shri Bernardo Reis, for the respondent.

Panaji, dt: 16th March, 1973.

#### JUDGMENT

This is a petition filed by Shri G. Y. Bhandare against the respondent No. 1 who is the returned candidate of the House of People from the Marmagao Constituency, the result of the election wherein was declared on the 10th March, 1971. The petitioner was a candidate to the said election. The nomination of the respondent no. 1 was challenged by the petitioner before the Returning Officer, who over-ruled the objection of the petitioner. The petitioner now files this petition to have the election of the respondent no. 1 declared null and void on the grounds mentioned in the petition.

2. Shortly stated the case of the petitioner is as follows: — By Clause 2 of the Goa, Daman and Diu (Citizenship) Order

1962 (Hereinafter referred to as «the Order»), any person who was born before the 20th December, 1961, in the territory of Goa, Daman and Diu was deemed to have become a citizen of India on that day provided that any such person shall not be deemed to have become a citizen of India as aforesaid if within one month from the date of the publication of «the Order» in the Official Gazette, that person makes a declaration in writing to the Administrator of Goa, Daman and Diu or any authority specified by him in this behalf, choosing to retain the citizenship or the nationality which he had immediately before the 20th December, 1961. By a declaration in writing (Ex-P-3) made on 27-4-1962 the respondent no. 1 choose to maintain his Portuguese nationality and citizenship which he had immediately before the 20th December, 1961. (Exh. P. 3 shall hereinafter for brevity sake be called P. 3). On the 15th May, 1962, the respondent no. 1 proceeded on a foreign travel on a Portuguese passport issued to him on or about the 25th June, 1958, by the former Portuguese Government of Goa, Daman and Diu. As his Portuguese passport was expiring on the 21st June, 1962, he applied to the Portuguese Consulate in London for a new Portuguese passport which was granted to him on the 18th June, 1962. The new Portuguese passport was valid up to the 17th June, 1964. Apart from the fact that the respondent no. 1 became a Portuguese citizen by virtue of P. 3, the respondent no. 1 also acquired Portuguese citizenship by renewing his Portuguese passport in the Portuguese Consulate in London on the 18th June, 1962. In October 1962 the respondent no. 1 returned to Goa as an alien and applied for and obtained a residence permit to stay in India, which was renewed from time to time. Clause 3A of the Citizenship Rules, 1956 (hereinafter called «the Rules») made under the Citizenship Act, 1955 (hereinafter called «the Act») provides that where a person who has become an Indian citizen by virtue of «the Order» holds a passport issued by the Government of any other country, the fact that he has not surrendered the said passport on or before the 19th January, 1963, shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that day. The respondent no. 1 deliberately and knowingly failed and neglected to surrender his Portuguese passport before the 19th January, 1963, and has thereby voluntarily acquired Portuguese citizenship irrespective of the facts that he had done so by making the declaration P. 3, and of the renewal of Portuguese passport in London. Sometime in January 1964, respondent no. 1 returned his Portuguese passport to the Special Adviser, Ministry of External Affairs, Panaji, and without saying anything more claimed Indian citizenship. Whilst claiming Indian citizenship respondent no. 1 suppressed the existence of P. 3. The Administration of Goa, Daman and Diu having P.3 with them and knowing that the respondent no. 1 was not a citizen of India as a result of P. 3 and of the renewal of Portuguese passport and his failure to surrender it on or before 19-1-1963, for reasons best known to them, informed respondent no. 1 by the letter dated the 15th December, 1964, that he had prima facie become a citizen of India by virtue of «the Order». The said information was to the knowledge of respondent No. 3 who was later on dropped by the petitioner, false and erroneous and contrary to documentary evidence in their

possession. In fact and in law respondent no. 1 was not a citizen of India, under «the Order» and even if he has become he had, to the knowledge of the third respondent ceased to be for reasons already stated. At any rate the said letter is no evidence that *prima facie* the respondent no. 1 is a citizen of India. Therefore the respondent no. 1 was for the reasons previously stated not an elector as contemplated under the Representation of the People Act 1951, and as he was disqualified from being chosen to fill a seat in Parliament, his election is void.

3. The petitioner took objection to the nomination of the respondent no. 1 before the returning officer on the ground that he was not a citizen of India. The respondent no. 1 produced before the Returning Officer two passports issued by the Chief Secretary of the Goa Government and the letter dated 27-7-1970 from the Government of India saying that a certificate of citizenship under Section 13 of «the Act» was not necessary for him as the Government of Goa had already conveyed to him that he was, *prima facie*, an Indian citizen. Based on the documents produced by the respondent no. 1, the returning officer overruled the objection of the petitioner.

4. The petitioner prayed that the election of the respondent no. 1 to the Lok Sabha from the Marmagao Parliamentary Constituency, the result whereof was declared on 10th March, 1971, be declared void.

5. By his written statement the respondent no. 1 controverted the material facts alleged by the petitioner. His case is as follows:—

6. The petition should be dismissed *in limine* under Section 86(1) of the Representation of the People Act, 1951, as the copies accompanying the petition were not at all attested by the petitioner as required by Section 81(3) of the Representation of the People Act, 1951, or otherwise. This Court has no jurisdiction to entertain the petition as section 100 Sub-section (1) Clause (a) of the Representation of the People Act, 1951 is inapplicable to a candidate who after being duly elected has already taken on oath a seat in the House of the People. The decision as to whether a member of the House of People who has taken his seat was or was not an Indian citizen is a matter for the exclusive determination and decision of the President of India under Article 103. If this construction is not accepted the provisions of Section 100(1) (a) of the Representation of the People Act 1951 would be *ultra vires* Articles 102 and 103 of the Constitution.

7. The first proviso to paragraph 2 of «the Order» is *ultra vires* and in excess of the powers conferred by Section 7 of «the Act». Government was not empowered to impose a condition that if a certain declaration is made within a certain time a person shall not be deemed to be a citizen of India. The only power vested in the Central Government was to specify by a notified order persons who should be citizens of India by reasons of their connection with an annexed territory.

8. The respondent no. 1 became a citizen of India under clause 2 of «the Order» in view of the fact that he was born in Goa. The proviso to Clause 2 is not applicable to the respondent no. 1 as he made no legal and valid declaration on 27-4-1962 (P. 3) in as much as he did not in fact choose to retain his Portuguese nationality or citizenship. Moreover, P. 3 was made at the request of the then Special Adviser, Goa, for reasons which had no connection whatever with any intention to retain Portuguese nationality or citizenship or to lose Indian citizenship. P. 3 does not bind the respondent or effect the operation of the first part of Clause 2 in so far as it is applicable to the respondent no. 1. The only intention of making the declaration (P. 3) was to retain the Portuguese passport and not to renounce Indian nationality or to maintain Portuguese nationality. The said Special Adviser knowing of this intention conveyed to the respondent no. 1 that he could make the declaration P. 3. In any case P. 3 was never intended to be or accepted or acted upon as a declaration made under the said proviso to Clause 2. The respondent wanted to go to Portugal on an Indian passport to settle some of his private affairs. He had a talk with Shri Handoo, the then Special Adviser to the Military Governor of Goa, Daman and Diu, about his trip to Portugal. Shri Handoo thought of taking advantage of the journey of the respondent no. 1 to Portugal under some ostensible reason and entrusted the respondent no. 1 with a secret mission. Shri Handoo therefore advised the respondent not to go on an Indian passport to avoid attracting attention and consequent trouble at the Portuguese end and requested respondent no. 1 to retain his Portuguese passport and to comply with other formalities for doing so.

As respondent no. 1 was apprehensive about the possible loss of his Indian citizenship which he claimed to possess by birth, Handoo dictated to him the draft of a letter which respondent no. 1 was supposed to address to him. Respondent no. 1 took the draft home, typed the letter to Handoo (Exh. P. 4) and also another declaration dated 27-4-62 addressed to the Senior Superintendent of Police (Exh. R. 5) stating that he wished to retain his Portuguese passport. He went to the Police Station and handed over the declaration, R. 5. The S. S. P. glanced at R. 5, returned it to respondent no. 1 and asked him to make a declaration in the prescribed form. Respondent no. 1 told the S. S. P. that he had been sent by Handoo and the S. S. P. nodded his assent, and told respondent no. 1 that Handoo had telephoned to him regarding the case of respondent no. 1. He signed the declaration P. 3 as a formality and then registered his passport in the Police in the prescribed form and went to Handoo to hand over to him the letter P. 4. He showed R. 5 to Handoo and told him that the Police would not accept it. Handoo told him that the signing of a prescribed form was the formality required to keep up the pretence that he was a Portuguese citizen so that his secret mission might not be jeopardized. An exit and re-entry permit was granted to respondent no. 1 by the Special Officer, Ministry of External Affairs, Panaji, on 1-5-1962 mentioning therein that this was a special case. Respondent no. 1 complied with all the formalities only with the intention of retaining temporarily the Portuguese passport and thinking that his citizenship could in no way be affected, and without intending to retain Portuguese citizenship or nationality. No member of the family of the respondent no. 1 had retained Portuguese citizenship.

9. Respondent no. 1 went to London where he had to renew his Portuguese passport. From London he contacted friends in Portugal and was advised not to enter Portugal. He therefore did not go to Portugal.

10. On his return to India he reported to Handoo and told him that he would be able to make a trip to Portugal, later. Handoo then advised him to continue to retain the Portuguese passport and to comply with the necessary formalities and take due precautions. Shri Handoo was at all times aware that the respondent no. 1 never intended to do any act to jeopardize his Indian citizenship and Handoo himself expressed to the respondent the Government's views that the respondent continued to be an Indian citizen. Respondent no. 1 registered his passport, applied for residence permit and kept renewing it from time to time merely to comply with formalities. When Clause 3A was inserted in Schedule III to «the Rules», respondent no. 1 addressed the letter R. 6 mentioning specifically the authorisation of 1-5-1962 and that he was writing R. 6 to enable him to obtain an Indian passport in due course.

11. He surrendered his Portuguese passport to the Special Adviser, M. E. A., on 15-1-1964. On 25-4-1964 the Registration Officer threatened to prosecute respondent no. 1 for not extending his stay. Respondent no. 1 replied that he had surrendered his passport. The Registration Officer insisted with respondent no. 1 that permission to stay had to be extended. On 1-5-1964 respondent no. 1 wrote to the Special Officer, M. E. A. asking him to inform the Registration Officer that he was an Indian citizen who was holding a Portuguese passport only temporarily. On 18-5-1964 respondent no. 1 was called by the Under Secretary, Home Department, Government of Goa. The respondent no. 1 met the Under Secretary. On 3-6-1964 respondent no. 1 wrote to the Under Secretary giving him some date required by him and requesting him to arrange for the respondent's Indian citizenship to be accepted. On 14-7-1964 the S. S. P. called respondent No. 1 to his office with a birth certificate to show that respondent no. 1 was a Goan by birth. In reply to his application dated 3-6-1964, respondent no. 1 received the letter Exh. P. 41 dated 15-12-1964 whereby the Under Secretary, Goa Government, informed him that he was directed to state that respondent no. 1 had *prima facie* become a citizen of India by virtue of «the Order».

12. When in the year 1969 the question of his citizenship was again raised by the Government of Goa and referred to the Government of India, Ministry of Home Affairs, the Joint Secretary Government of India, wrote to respondent no. 1 that the matter had been reconsidered and treated as closed. The respondent no. 1 then requested the Government of India to issue to him a certificate under section 13 of «the Act». After considering the matter the Joint Secretary, Government of India, M.H.A., advised the respondent no. 1 that since the Goa Administration had, in their letter dated 15-12-1964 (P. 41) already informed the respondent that he had *prima facie* become a citizen of India by virtue of «the

order» the necessity of a certificate under Section 13 of «the Act» did not arise. In any event, having regard to the facts and circumstances in which the purported declaration P. 3 was made, Exh. P. 52 is in fact and in law a certificate under the said Section and must be construed to be so. In this view of the matter, a duly authorised officer of the Central Government having adopted and accepted the certificate P. 41, P. 41 must be construed as having the same effect as a certificate under Section 13 of «the Act». There is therefore conclusive evidence that the respondent no. 1 is a citizen of India on and from 15-12-1964 or at least from 27-7-1970.

13. In law the natural status of a subject of an annexed territory is a matter for the State and the Courts of law can have no say in the matter. The case must therefore be referred to the Government for its decision under «the Act».

14. The fact that respondent no. 1 renewed his Portuguese passport in 1962 or did not surrender it before 15-1-1963 has no relevancy at all, not only in view of the facts mentioned above, but also because the said passport was returned and an Indian passport was obtained in 1965 and another Indian passport was obtained in 1970.

15. This court has no jurisdiction to decide matters regarding acquisition of foreign citizenship by an Indian national on account of his omission to act in accordance with Rule 3A of «the Rules». In any event, Rule 3A is *ultra vires* and in excess of the powers conferred on Government by Section 18 of «the Act» because the same is a rule of substantive law and not a rule of evidence.

16. On the basis of the case set up by the respondent no. 1 as narrated by me in the preceding paragraphs, the respondent no. 1 prayed that the petition be dismissed in limine.

17. The case of the Government of India, the respondent no. 3 in this petition was as follows:—

18. Respondent no. 1 became a citizen on 20th December 1961 and is still a citizen of India. P.3 was not voluntarily signed by respondent no. 1 as it was signed by him on advice and at the instance of the then Special Adviser, Goa, (Shri Handoo) acting on behalf of respondent no. 3. P.3 does not in any way affect the status of Indian citizenship acquired by respondent no. 1 by virtue of the provisions of «the Order». Respondent no. 1 did not continue to be a Portuguese national on account of P.3. Having regard to the circumstances under which P.3 was signed, P.3 is not a declaration contemplated by the proviso to «the Order». The Special Officer, M. E. A. issued to respondent no. 1 a special authorisation permitting respondent no. 1 to go to U.K. and Portugal on his Portuguese passport and return to India within a period of 6 months. After respondent no. 1 returned to India residential permits were granted to him from time to time with a view to avoiding any complications as respondent no. 1 held a Portuguese passport for reasons connected with the affairs of State, and the said permits were granted on behalf of respondent no. 3 with a view not to embarrass respondent no. 1. Respondent no. 1, did not cease to be an Indian citizen from June 1962 or later on at any time. Respondent no. 1 returned his Portuguese passport to the Special Officer, M. E. A., Panaji, in January, 1964, and sought recognition of his Indian citizenship. He did not apply for his registration as a citizen of India under «the Act». Respondent no. 1 was treated as a citizen of India as from 20th December, 1961. Respondent no. 1 did not commit acts sufficient to bring about the termination of his Indian citizenship. Respondent No. 1 was an elector under the Representation of People Act, 1951. The passports issued to the respondent no. 1 are of relevance to this case.

19. These in short are the cases of the petitioner, the respondent no. 1 and the respondent no. 3.

20. On these pleadings, my learned predecessor framed on 16-9-1971 the following issues:—

1. Has this Court jurisdiction to entertain the election petitions?
2. Is the petitioner a citizen of India?
3. Did the petitioner comply with the provisions of Section 81 (3) of the Representation of People Act 1951 and if not, is the petition fit to be dismissed under Section 86(1) of that Act?
4. Whether the first proviso to Para 2 of the Goa, Daman and Diu (Citizenship) Order 1962 is *ultra vires*

and in excess of the powers conferred by Section 7 of the Citizenship Act 1955?

5. Was the first respondent disqualified to be chosen as member of the Lok Sabha in March 1971 for the reasons stated by the petitioner in the election petition?
6. To what relief?

The parties raised no objection as to the framing of these issues. Issues nos. 1, 3 and 4 were set up for being heard as preliminary issues. My learned predecessor also decided that if the parties were prepared to adduce evidence about issue no. 2, that issue also would be decided alongwith issues nos. 1, 3 and 4. My learned predecessor by his order dated 5th October, 1971, decided issues nos. 1, 2 and 4. He did not decide issue no. 3 because the parties wished to adduce evidence regarding that issue. Issues nos. 1 and 2 were decided in the affirmative, in favour of the petitioner and issue no. 4 was decided in the negative, also in favour of the petitioner. The issues that fall for my determination, therefore, are the issues nos. 3, 5 and 6.

21. The first of these issues is regarding the presentation of the petition. The petition was handed over to the Registrar on 20th April, 1971. The Registrar made an endorsement on the petition that the petition was presented on that day. The roznama shows that when the petition was handed over to the Registrar copies of the petition had not been attested by the petitioner under his own signature to be true copies of the petition as required by Section 81 (3). The petition was not registered on that day. Rule 5 made by this Court in regard to election petitions under the Representation of the People Act, 1951, provided immediately after the petition is presented the Registrar shall endorse thereon the date of presentation and shall enter it in a special register maintained for the registration of the election petitions. This rule was not fully complied with by the Registrar. When the petition was handed over to him by the petitioner he made an endorsement therein, but did not register the petition in the special register. Before such registration was done the petitioner attested all copies to be true copies of the petition on 23-4-1971. On 24-4-1971 the petition was registered in the special register maintained for the registration of election petitions.

22. In the roznama there is an entry made by the Superintendent that the petitioner had not attested the copies as true copies. The petitioner has stated in the course of his evidence that he had attested the copies but that he had not attested the annexures and that the annexures were merely signed by him. It is possible that the Superintendent has made a mistake due to oversight. However, I have to go by records and I have to accept the entry in the roznama made by the Superintendent in preference to the deposition of the petitioner. The entry made by the Superintendent reads as follows:—

«The copies for the respondents are not attested by the petitioner under his own signature to be true copies of the petition».

From this entry all that can be concluded is that the copies of the petition were not attested, but it cannot be said from that entry that the copies of the petition were not even signed by the petitioner. The respondent no. 1 has not stated that the petitioner had not signed the copies when the petition was presented. The case of the respondent no. 1 is that the petition was not attested. An attestation means certifying a copy to be true and signing it. According to the respondent no. 1 therefore both these things were missing. The burden lies on the respondent no. 1 to prove his contention and as I have said there is no proof that the petitioner had not even signed the copies of the petition though there is proof that he had not attested them. In the normal course I am to presume that the copies of the petition had been duly signed. There is in addition to this the fact that I have already pointed out, that even attestation was done before the registration of the petition. Shri Bhandare relies on «Harish Chandra v. Triloke Singh» AIR 1957 SC 444 and on «Dr. Anup Singh v. Abdul Ghan» AIR 1965 SC 815. In the first of these cases an amendment has allowed permitting a new ground to be raised after the petition was filed and Shri Bhandare argues that if an amendment of that nature was allowed there is no reason why the petitioner should not be allowed to attest the copies of the petition after it was filed but before it was registered. In the second decision on which Shri Bhandare relies, copies of the petition merely signed but not attested and served on the opposite party were considered substantial compliance

with the provisions of Section 81(3) of the Representation of the People Act. It appears to me that this decision of the Supreme Court clinches the issue. There has been substantial compliance with the provisions of Section 81(3) in the present case and I answer the issue no. 3 in the affirmative in favour of the petitioner.

23. I shall now proceed to consider the issue no. 5.

24. This issue is, whether the respondent no. 1 was an Indian Citizen at the time of the Election. In this regard the contention of both the parties are two fold. The petitioner contends that the respondent no. 1 never acquired Indian Citizenship and always continued to be a Portuguese citizen in view of the proviso to clause (2) to «the Order» and that assuming that he did acquire Indian citizenship under «the Order», he lost it in June 1962 when he renewed his Portuguese Passport or in any event on 19-1-1963 when he failed to surrender his Portuguese passport. The contentions of the respondent no. 1 are that the respondent no. 1 was an Indian citizen by virtue of «the Order», and that, though the second question raised by the petitioner regarding the loss of citizenship is within the exclusive jurisdiction of the Central Government and not of this Court, this Court should not, in the event of answering his first contention in the affirmative, refer the matter to the Government of India because there is ample evidence on record to show that the Government of India has already answered that question.

25. The respondent no. 1 had raised a preliminary objection regarding the jurisdiction of this Court. He contended that assuming P.3 intentionally made, the legal effect of P.3 would be that the respondent no. 1 had, on account of it lost his Indian citizenship which he had acquired on the coming into force of «the Order». The argument of Shri Porus Mehta on behalf of the respondent no. 1 was that the respondent no. 1 became an Indian citizen on the day «the Order» was published and ceased so to be on the day he executed P.3, if at all P.3 was to be given any value in law. I have disposed of this preliminary point by my order dated 5-1-72 and I held that in case P.3 was to have its legal effect the respondent no. 1 had never acquired Indian citizenship.

26. The petitioner also raised a preliminary objection regarding P.3, namely, that the respondent no. 1 should not be allowed to lead any evidence to show that P.3 was not intentionally executed by the respondent no. 1. This preliminary contention raised by the petitioner based on sections 90, 92 and 94 of the Indian Evidence Act, was rejected by me by my order dated 5-1-72.

27. It is contended by the petitioner that the execution of P.3 is a complete proof that the respondent no. 1 never became an Indian Citizen, and that even if it is assumed without admitting that P.3 was not intentionally executed by the respondent no. 1, its legal implication and effect cannot be nullified even by the Government of India because the Government of India has no power to bypass the provisions of law.

28. The contention of the respondent no. 1 is that he did not sign P.3 voluntarily, but signed it at the instance of the Government of India with the purpose of doing certain work in connection with the affairs of State and that therefore P.3 having been signed without the intention of retaining the Portuguese citizenship, it is ab initio, null and void and without any legal effect.

29. The evidence which I have to consider consists of the depositions of the petitioner, the document filed by the petitioner and the respondent no. 1, the evidence of the respondent no. 1, and the evidence of the two witnesses of the respondent no. 1, Shri Handoo, the Special Adviser to the Government of Goa, Daman and Diu at the relevant time and Shri Patel, the Joint Secretary, Government of India, Ministry of Home Affairs.

30. Before I proceed to consider this evidence I will decide the questions which were raised by the petitioner regarding the genuineness of R. 5 and R. 6. All the other documents have been admitted without any controversy.

31. R. 5 is a declaration by respondent no. 1 that he wished to retain Portuguese passport. It is contended by the petitioner that it was not at all necessary for respondent no. 1 to make that declaration because even Indian citizens could keep Portuguese Passports until clause 3A was inserted in the Schedule III to the Citizenship Rules 1956, requiring the surrender of such passports on or before 19-1-63. It must

however be remembered that in the present case according to the case of respondent no. 1 he wanted to go to Portugal on an Indian passport and he was told by Handoo to go on a Portuguese passport. He stated that he thought that the instructions given by Handoo to him were to do the needful to retain the Portuguese passport and to register it, and that he was asked to sign P.3 by the Registration Officer much against his wish and his expectation. It is possible therefore, that the respondent no. 1 thought that he had to make a declaration like R. 5 and not like P. 3 for the purpose of travelling abroad on a Portuguese passport. The petitioner further contends that R. 5 was preserved for the abnormally long period of 10 years; that the presence of the photostat copy of R. 5 in the record of the Government of India could not be explained; that though R. 5 and P. 4 were written one after another by the respondent no. 1 in his office, the papers used for these documents were different and the signature on each of them were also different; that the Senior Superintendent of Police was not examined regarding R. 5 and that R. 5 was not mentioned in the voluminous correspondence between the respondent no. 1 and the Goa Government or between the Goa Government and Delhi or between the respondent no. 1 and Delhi. Unfortunately, all these facts which according to the petitioner, cast a suspicion about the genuineness of R. 5, were not put to the respondent no. 1 in the course of the cross-examination nor were any suggestions made to him in that regard. The question of the respondent no. 1's citizenship was being agitated up to the end of 1964 and it was re-raised in 1969. It can therefore be said that R. 5 was kept for about 5 years, but not for 10 years. It was not suggested to the respondent no. 1 that the photostat copy of R. 5 was surreptitiously placed on Government records. Such suggestion was made to Patel but was repelled by him. It is true that the papers used for P. 4 and R. 5 were different, but whereas R. 5 was a declaration, P. 4 was a letter. The signatures in these two documents vary. I must agree with the petitioner that in the normal course we could expect the respondent no. 1 to sign in the same manner on R. 5 and P. 4. It is also true that R. 5 was not mentioned in the various letters written in connection with the citizenship of the respondent no. 1. Handoo was shown R. 5 and he admitted that the respondent no. 1 showed R. 5 to him on 27-4-62 and that the respondent no. 1 told him that he had produced R. 5 to the Senior Superintendent of Police in the first instance, but that the Senior Superintendent of Police did not accept it and in its place he asked the respondent no. 1 to sign P. 3; that he told the respondent no. 1 that P. 3 was the usual form and that R. 5 could not be accepted. Be that as it may, R. 5 is not a document vital to the outcome of the case.

32. R. 6 is the letter dated 18-1-63 addressed to the Special Officer, by respondent no. 1 informing him that the respondent no. 1 had left India on a Portuguese passport bearing No. 3093/62 on 15-5-62 and that he had to retain it for some time more for going abroad. The respondent no. 1 further states in R. 6 that R. 6 is written on account of the notification inserting clause 3A in Schedule III to the Rules and for the purpose of enabling the respondent no. 1 to obtain his Indian Passport in due course. It is argued by the petitioner that this letter was not at all necessary. I do not see how this is so. The case of the respondent no. 1 was that he was an Indian citizen notwithstanding the retention of the Portuguese passport and clause 3A was coming on the way of his claim to Indian citizenship. In this connection it must be recalled that according to the respondent no. 1 P. 3 was not made voluntarily and had no legal effect. The respondent No. 1 has stated that he had sent R. 6 to the Special Officer and the presumption arises that in due course of business the Special Officer did receive R. 6. The argument of the petitioner that no mention is made of R. 6 in the inter-Government or Government correspondence, that R. 6 was received, is of no great relevance. In his letter dated 15-1-64 (P. 24) addressed to the Special Officer, the respondent no. 1 invited the attention of the Special Officer to R. 6 and the Special Officer did not deny that R. 6 was received by him. In the statement made to the police by the respondent no. 1, the respondent no. 1 brought to the notice of the police that he had written R. 6 to the Special Officer on 18-1-63. This fact is reproduced by the Senior Superintendent of Police in his letter dated 22-7-64 (Exh. P. 38) addressed to the Special Officer. In his letter dated 24-8-64 (Exh. P. 39) written by the Chief Secretary to the Under Secretary, Government of India, the Chief Secretary also reproduced the fact that the respondent no. 1 had stated that he had written R. 6 to the Special Officer. I cannot accept the argument of the petitioner that the reference made to R. 6 in various letters, is made because in his letter dated 3-6-64 (Exh. P. 33) to the Under Secretary, Home Department,



Panaji, the respondent no. 1 had transcribed the body of R. 6. The transcription of R. 6 does not contain the name of the person to whom the letter was addressed or the date or the signature of the addressor. The reference made to R. 6 by various officers of the Government is not to the transcript of R. 6 but to a copy of R. 6. In the circumstances it is difficult for me to hold that R. 6 was never written and was a letter concocted for the purpose of supporting the case of the respondent no. 1.

33. The first part of issue No. 3 which I have to consider is whether the respondent no. 1 travelled abroad on a Portuguese Passport at the request of Shri Handoo on a secret mission connected with the affairs of the State. I will, therefore, discuss first the question of the secret mission.

34. The respondent no. 1 has stated that whilst he was a student he had taken part in the struggle for the Liberation of Goa; that he used to propagate the idea of the liberation of Goa; that he collected secret information between 1954-57 and gave this information to Shri Ashok Mehta on behalf of the Government of India, in Bombay; that he collected information in Goa whilst he was a student in Bombay because he was asked to do so. Some support to these statements of the respondent No. 1 is found in the evidence of Handoo who stated that he came in contact with the respondent no. 1 for the first time in 1958 or 1959 in Bombay at the residence of Mr. Mehta. Handoo also stated that on the information received by him he found the respondent no. 1 reliable enough to be entrusted with some secret mission.

35. The respondent no. 1 stated that after the liberation he met Handoo and told him that he wanted to go to Portugal on an Indian passport for settling some private affair with a Portuguese lady; that on 10th April, 1962 he handed over the Portuguese passport that he was then holding, to Handoo; that when he met Handoo on 27-4-62, Handoo suggested to him to go on a Portuguese passport to do some important work for the Government of India; that when he received the instruction from Handoo, he made it clear to Handoo that he was an Indian citizen and wished to remain an Indian citizen; that Handoo assured him that his travelling on a Portuguese Passport he would in no way jeopardise his Indian citizenship and that it was necessary that he should travel on a portuguese passport to avoid attracting attention of the Portuguese and of the public in order that the secret mission on which he was to travel might be performed smoothly and that for this purpose he had to keep the pretence that he was a Portuguese citizen in every way. This statement made by the respondent no. 1 in his examination-in-chief was maintained throughout the cross-examination and any suggestion that the statement was false was stoutly repelled by the respondent no. 1. Shri Handoo also substantially supported the statement when he deposed that he had a meeting with the respondent no. 1 sometime in April, 1962; that the respondent no. 1 expressed to him his desire to go to Portugal on an Indian passport with a view to solve his entanglement with a white Portuguese lady; that as he desired to use the respondent no. 1 he suggested that the respondent no. 1 should retain his Portuguese passport and that the respondent no. 1 would be issued an Indian passport when the occasion arose. Handoo also stated that he had decided to send the respondent no. 1 on a secret mission connected with the affairs of the State because, (i) the respondent no. 1 had a Portuguese passport, (ii) he had an ostensible reason to visit Portugal, which would not attract the attention of the Portuguese and the public to the secret mission and (iii) respondent no. 1 was a trustworthy and loyal Indian citizen.

36. P. 3 is the main stay of the evidence on which the petitioner relies in support of his case. This document is a declaration in a prescribed form which persons of Goan origin desiring to retain Portuguese citizenship under the proviso to Clause 2 of «the Order», had to fill up and sign. Respondent no. 1 states that after the talk he had with Handoo regarding his desire to travel on an Indian passport and the advice given by Handoo to travel on a Portuguese passport for reasons already stated, respondent no. 1 saw Handoo on 27-4-1962; that Handoo returned to him the Portuguese passport given to Handoo on 10-4-1962 and asked him to get it registered at the Police; that Handoo told him that he would have to make a declaration to the S. S. P. to retain that Portuguese passport; that Handoo said that he would intimate the S. S. P. about it; that Handoo also dictated the draft of the letter P. 4, and instructed him to have the letter written and addressed to Handoo; that the respondent no. 1 went to his office, type the declaration R. 5 and letter P. 4 and thereafter proceeded to the Police Station; that he handed over the declaration R. 5

to the S. S. P., the S. S. P. glanced at it, and returned it to him and instead, made him fill in and sign P. 3, and then sent him to the section concerned to get his passport registered; that he got his passport registered and went to Handoo, gave him P. 4 and showed him R. 5; that he told Handoo that the S. S. P. made him sign a form on Handoo's instructions; that he inquired what that form was and why he had been made to sign that form instead of R. 5; that Handoo told him that that was the form that had to be signed for a portuguese to leave the country; that he told Handoo that he was an Indian citizen and that he had made it quite clear to him that he wished to remain an Indian citizen; that Handoo told him that he had to make him sign the form as a formality to do the work that he had entrusted him to do on behalf of the Government of India and that the signing of the form would not in any way affect his Indian citizenship; that Handoo said that anything out of the ordinary would attract attention and that in order to do the work that he had entrusted him, he had to make him keep up the pretence of being a Portuguese citizen in every way; that P. 3 was not signed voluntarily but was signed at the instance of Handoo for reasons connected with affairs of State and not to renounce his Indian citizenship or retain Portuguese citizenship; that his only intention in signing P. 3 was to retain a Portuguese passport and not to lose Indian citizenship or to retain or acquire Portuguese citizenship. In cross-examination respondent no. 1 stated that the ostensible reason why he retained a Portuguese passport was that he wanted to visit Portugal for personal reasons and was going with the permission of the Government, but that the real reason for retaining the Portuguese passport was an assignment given to him in official confidence of which the details are in secret files of the Government; that he came to know of «the Order» in its entirety when he saw Handoo and asked him what P. 3 was; that it was at that moment that he read «the Order» for the first time in Handoo's office and that he had made it clear to Handoo around the middle of March 1962 that he wished to remain an Indian citizen; that P. 3 was not signed in pursuance of «the Order» but merely to keep a pretence; that the signing of the form raised no implications in his case because he did not sign the form voluntarily; that he received an assurance from Handoo before he signed the form and also thereafter and that had he not received such assurance after he signed the form he would have proceeded further in the matter; that the assurance was not given particularly with reference to the form but generally, that his citizenship would not be jeopardized; that when Handoo told him that anything out of the ordinary would attract attention, Handoo meant by the word «attention» the attention of the public and that the attention of the public should be avoided so that he might not land into complications with regard to the work with which he was entrusted, which work was of secret nature; that in the meeting in the evening of 27-4-1962 Handoo told him to keep the pretence of being a Portuguese citizen in every way; that Handoo told him to go directly to Portugal but thereafter he told him to go first to London. In the course of his cross-examination he stated that he considered himself bound to sign P. 3 because of the agreement between Handoo and him to do the work, though he was not to receive any consideration for the work and he was willing to do the work for the Government; that he consented to follow Handoo's instructions on the assurance that his citizenship of India would in no way be jeopardized. To a suggestion made by Shri Bhandare in this regard, respondent no. 1 replied that it was true that he had agreed to do the secret work solely to serve the country.

37. Handoo has also deposed as to the circumstances under which P. 3 was signed by respondent no. 1. He has stated that respondent no. 1 retained his Portuguese passport till such time as he had asked respondent no. 1 to relinquish it; that he asked the respondent no. 1 to relinquish it sometime in December 1963 or January 1964; that he asked respondent no. 1 to retain the Portuguese passport in order that he could comply with the assignment that was given to him; that he took advantage of the fact of the entanglement of respondent no. 1 with a Portuguese lady to give him a top secret assignment under this cover. In the cross-examination Shri Handoo stated that respondent no. 1 told him that he was asked by the S. S. P. to sign the printed form of declaration which is the usual form; that he told respondent no. 1 that it was necessary to sign the usual form as demanded by the S. S. P.

38. It is contended by the petitioner that a plain reading of P.3 conveys a clear intention on the part of respondent no. 1 to retain Portuguese citizenship and that therefore P.3 would be conclusive and un rebuttable proof that respondent no. 1 in-

tentionally retained his Portuguese citizenship. It is further contented by him that there was no element of threat or coercion or misrepresentation or fraud or undue influence in regard to the signing of P. 3. Shri Bhandare argues that unless respondent no. 1 could show that he signed P.3 in performance of a legal duty the legal effect of P.3 should follow. This question does not survive in view of my order dated 5-1-1972 wherein I held that evidence regarding the fact that the declaration was made by respondent no. 1 without mens declarandi, could be led. If respondent no. 1 had no intention to execute P. 3 and if he had executed it just to keep up a pretence, as is alleged by him, P.3 would have no legal effect. Shri Bhandare relies on 'Abdul Salam v. Union of India and Another' A.I.R. 1969 all. 223. In that case Abdul Salam, the plaintiff appellant migrated to Pakistan in 1950. He remained there for 5 years. In 1955 when he received news that his father was seriously ill and almost on his death bed he felt compelled to obtain a Pakistani passport and to return to India. He overstayed in India and was served with a notice to leave the country. He instituted legal proceedings to restrain the Government from deporting him. It was held by the Allahabad High Court that desire to be present at a particular place does not create any legal obligation to be present there and that therefore it could not be said that the passport was not voluntarily obtained. It seems to me that it is not difficult to distinguish Abdul Salam's case from the present one. Abdul Salam obtained a Pakistani passport after staying in Pakistan for 5 years, and returned to India for purely personal reasons. In the case before me it is contended by the respondent no. 1 that when he wanted to go to Portugal for personal reasons he wanted to go on an Indian passport and that he retained the Portuguese passport purely because he was asked to do so to carry out a top secret assignment in connection with affairs of State. According to the respondent no. 1 his desire to keep the Portuguese passport was therefore not for personal reasons but for reasons of interest of State. The desire was prompted by the legal obligation that he had to discharge due to the undertaking given to Handoo to perform the secret mission. It appears to me that when someone offers to perform some task in relation to affairs of State whatever he does towards the performance of that task is done under an implied legal obligation which flows from the undertaking given by him to the State.

39. The other arguments advanced by Shri Bhandare regarding the volition of respondent no. 1 to sign P. 3 are: that Handoo does not corroborate that he had given any instructions either to respondent no. 1 or to S. S. P. in the matter of execution of P. 3; that the «pretence of nationality», «affairs of State» and «secret mission» are absent in the written statement of respondent no. 1; that Handoo did not give to respondent no. 1 a blanket assurance regarding the safeguard of Indian nationality as is alleged by respondent no. 1; that respondent no. 1 resigned to his fate when he came to know about the implications of having signed P. 3; that the assurance of Handoo in relation to citizenship is absent in the written statement; that Handoo does not corroborate any discussion with respondent no. 1 in the matter of assurance of citizenship rights; that the respondent no. 1 does not state that the advice to execute P. 3 was included in the instructions given to him; that it was not necessary to sign P. 3 to retain Portuguese passport to visit Portugal; and that Handoo did not have a conversation with the S.S.P. regarding P. 3. These arguments are not substantially borne by the record or are otherwise incorrect. It is true that P. 3 need not be signed merely to retain Portuguese passport, but it had to be signed if respondent no. 1 was to travel on that passport. This position had eventually to be admitted by Shri Bhandare.

40. I have discussed the oral evidence of the witnesses regarding the intention of respondent no. 1 in signing P. 3. The main contention of respondent no. 1 is that it was signed unintentionally and merely to keep up a pretence that he was a Portuguese citizen so that the secret mission connected with affairs of State might be fulfilled. The existence of the secret mission itself was strongly challenged by the petitioner. The petitioner's case is that the secret mission is a concoction made by the respondent no. 1 and the Government of India acting in collusion. I have already narrated generally the evidence about the assignment of the secret mission. I am now going to discuss the oral evidence regarding the secret mission, and the instructions alleged to have been given regarding that mission.

41. Respondent no. 1 has stated in the course of his long cross-examination on this point, that instructions regarding the secret mission were being given to him by Handoo from time to time; that whilst giving instructions he was usually shown a note that had been written and that he was allowed

to take notes from those notes, if he so required; that his secret mission was to be carried out in Portugal and also in other countries. It was suggested to respondent no. 1 by Shri Bhandare that the instructions regarding the work for Government were given to respondent no. 1 by Handoo in the evening of 27-4-1962. Respondent no. 1 denied that suggestion and stated that they were given partly earlier and partly later and that the instructions were received by him until the day he left. Respondent no. 1 stated that some of the countries that he visited were Pakistan, England, France, Denmark, German, United States and Portugal. Later on he corrected himself and stated that he did not visit Portugal. It was argued by Shri Bhandare and that Handoo also stated that respondent no. 1 had visited Portugal when he was enumerating the countries which respondent no. 1 visited whilst abroad and that later on Handoo also corrected himself and said that respondent no. 1 had not visited Portugal. Shri Bhandare contends that this lapse on the part of both the witnesses was not casual. He however did not clearly state that it was the petitioner's case that respondent no. 1 did visit Portugal during his trip abroad. If the case of the petitioner was in fact that Portugal was visited, a suggestion would have been made to these two witnesses that respondent no. 1 visited Portugal. The petitioner could also summon the respondents to produce the Portuguese passport bearing no. 3093/62 which the respondent no. 1 surrendered to the Special Officer on 15-1-64. Nothing of the sort was done by the petitioner and I see no reason why the word of these two witnesses, that respondent no. 1 did not visit Portugal should not be accepted. Respondent no. 1 further stated in the course of his cross-examination that he was instructed to stay in each of these countries for sometime; that that particular mission was entrusted to him alone; that as far as the expenses of the journey were concerned the issue of sharing them never arose; that he volunteered to pay some of the expenses; that the question of expenses was discussed in the first week of April, 1962, when he agreed to do the work for the Government; that he told Handoo that he would pay certain expenses and Handoo agreed to the suggestion; that money was paid in cash to him before he left, but that he did not know what was the amount paid; that the money paid was in Sterling, but that he did not remember the denomination of the notes in which it was paid; that the money was paid in the month of May, 1962 in Goa; that he could not say what were the total expenses of the trip; that he did not remember how much money he had received from the Government; that he spent all the money that he received from the Government for the work entrusted to him by the Government and whatever he had spent in addition to what he received was reimbursed to him on his return; that the reimbursement was made in October in Goa, in rupees, in cash; that he spent in foreign currency of his own, which he had taken from here whilst going and was reimbursed in Indian currency; that some money was sent to him by Government whilst he was abroad but that he did not know the persons who delivered that money to him; that he accepted money from persons he knew were coming from Handoo. He used to identify those persons by connecting the instructions given to him with the messages the persons who came from Handoo used to give him; that he contacted some friends in Portugal whilst he was in London to find out the possibility of his visit to Portugal; that the names of those friends were given to him by Handoo in Goa; that he had taken down in writing the names of those friends and had kept a record of those names, but that the record was later on destroyed. Respondent no. 1 was asked by Shri Bhandare: — «You first stated that you could not disclose the names of the friends and when you were compelled to disclose the names later on, you stated that you did not remember the names. Which of the two versions is correct?», and the answer was: — «I do not want to disclose the names and also I do not remember the names». According to Shri Bhandare the answer was discrepant. On behalf of the respondent no. 1 it was contended that the meaning of the answer was that even if respondent no. 1 remembered the names of those friends he was not prepared to disclose their names. Respondent no. 1 further stated that he gave the accounts of his expenditure to Handoo, but maintained no copy of them; that all the notes he had taken down from the records either regarding the secret mission or the retention of Portuguese passport, the complying with formalities, and the taking of due precautions, were destroyed by him under instructions, when he returned the Portuguese passport. It was suggested to respondent no. 1 that the instructions he was speaking about had not been mentioned by him in the written statement. The respondent no. 1 replied that they were mentioned in the written statements in a very guarded manner and that it could be inferred from the general reading of the written statement that he had been entrusted with a secret mission. When respondent no. 1 was questioned about

his work in Portugal, he stated that the lady was not his relation, but his friend; that there was no entanglement as Handoo had written in P. 4; that the reasons for his visiting that friend were highly personal, i. e., the matter was private one between him and the lady; that the messages that were sent to him by friends in Portugal not to go to Portugal were communicated to him either by word of mouth or in writing; that the writings were hand delivered; that the messages were sent in Portuguese and English; that during his secret mission he was given means to identify himself, but that he was not given an identity card; that after leaving India he went first to Pakistan; that he does not remember whether in Pakistan he stayed in a hotel or a private house; that he stayed in London for about three weeks sometimes in a hotel, sometimes with friends; that he does not remember the name of the hotel; that he does not remember he made short trips from London before he renewed his Portuguese passport in June 1962; that he could not say the exact sequence of the countries he visited but that sequence could be found in the Portuguese passport that he surrendered; that his mission was not only to deliver secret messages but included meeting people and discussing with them; that the exit and re-entry permit (P.5) was given to him to facilitate the mission; that he could not say why countries other than U. K. and Portugal were not mentioned in P. 5; that when he was given P. 5 he had already been given instructions to visit various other countries; that the secret mission was against Portugal; that in other countries his mission was against Portugal; that he had specific instructions from Handoo not to disclose the mission to anybody and that he did not disclose even to his parents that he was going on a secret mission; that the friends who advised him not to go to Portugal were in Portugal; that he also received instructions not to go to Portugal from Handoo; that sometimes he contacted friends in Portugal and at other times friends contacted him; that the friends did not volunteer to give him that advice, but that he consulted those friends before leaving for Portugal; that the instructions to contact friends in Portugal were given to by Handoo in Goa; that instructions were received by him from Handoo not to go to Portugal whilst he was in London, after he contacted friends in Portugal; that he asked for instructions from Handoo; that he disclosed about the secret mission for the first time openly in this Court after the petition was filed because he found that Government themselves had made such disclosure in their written statement; that his mission ended on 15-1-1964 when he returned his Portuguese passport.

42. Handoo has substantially supported the statement of respondent no. 1 regarding the secret mission. Handoo stated that he entrusted respondent no. 1 with a highly top secret mission in connection with the security of the Government of India; that the respondent no. 1 had retained his Portuguese passport till such time he had asked him to relinquish it; that he had asked respondent no. 1 to retain his passport in order that he could comply with the assignment that was given to him; that respondent no. 1 travelled to various countries under instructions from him on a Portuguese passport; that he travelled for a period of six months on that passport in connection with the assignment that had been given to him; that the Government of India and respondent no. 1 shared the expenses of his travel abroad. In his cross-examination he stated that the reasons for choosing respondent no. 1 for the top secret assignment were:— (i) the holding of a Portuguese passport by respondent no. 1 (ii) his entanglement with a Portuguese lady (iii) the certainty that the respondent no. 1 was a trustworthy and loyal Indian citizen. He further stated that he considered respondent no. 1 the only trustworthy and loyal Indian amongst all the Goans in Goa for that particular assignment as he knew respondent no. 1 since the time respondent no. 1 was a student in Bombay; that he did check up the antecedents of respondent no. 1 with reference to his parents, family background, his associates and career, before entrusting him with the top secret assignment; that this check up was done through the normal channel through the C.I.D.; that he could not say whether the reports of the check up of the antecedents are available with the C.I.D.; that all that he could recollect at that moment was that there was no adverse report against respondent no. 1. In this regard I find that there is on record a report of the Police to say that the father and uncle of respondent no. 1 were holding pro-Indian views and that there was nothing adverse found against respondent no. 1. When Shri Bhandare asked Handoo how many persons he had considered for the top secret assignment before selecting respondent no. 1, he replied that he was not in a position to disclose that fact as he was under an oath of secrecy to the Intelligence Bureau of the Government of India. Shri Bhandare asked Handoo whether he could say about the amount of advance given to the respondent no. 1 before his departure

on the top secret assignment from Goa and Handoo replied that he did not remember the amount and that the amount advanced was not in cheque but in cash and that he did not remember the currency or the denomination in which the advance was made. Shri Porus Mehta argues that a person could not be expected to remember such details after ten years. The question was asked from Handoo whether he had sent the instructions to respondent no. 1 in every country he visited during the period of the secret assignment. Handoo replied in the affirmative and stated that he was in contact with respondent no. 1 while he was abroad on that assignment and while he was visiting various countries. He stated that the assignment was interconnected with his visit to various countries; that the instructions given to respondent no. 1 prior to his departure from Goa were altered subsequently when respondent no. 1 was in London; that the assignment involved risk to the life of respondent no. 1 and that such risk was envisaged by him when respondent no. 1 was sent from Goa; that the order in which he was to visit the various countries was Pakistan, U.K., Portugal, Germany and Holland; that he was required to stay in each country. Handoo stated that he did not disclose to Joshi that he was sending respondent no. 1 on top secret assignment; that he «would not» know why the exit and re-entry permit mentioned only U.K. and Portugal. When he was asked when did he meet respondent no. 1 for the first time in connection with the top secret assignment he replied that it was sometime early March 1962 and that the meeting was at his instance. He stated that he did not recollect whether at that meeting any other discussion besides the secret assignment, had taken place and that the secret assignment as far as he remembered terminated late in 1963.

43. Evidence about the existence of the secret mission was also given by Shri B. R. Patel, I.A.S., Joint Secretary, Government of India, Ministry of Home Affairs. Patel is the Joint Secretary in charge of citizenship section and he exercises all the powers and functions of the Central Government under the Citizenship Act 1955 and the Rules framed thereunder. The written statement filed by the Government of India was sworn by him. He was duly authorised by the Union of India to file the written statement and to state what was written in it. Patel was examined on commission in Delhi. A certified copy of the written statement was produced before the Commissioner and shown to him. He identified the certified copy and the copy was taken on record and read as evidence by consent of both the parties. Patel was cross-examined by Shri Bhandare, counsel for the petitioner, regarding the statements made by him in the written statement and also regarding other evidence given by him. Patel stated that the Union of India have treated respondent no. 1 as a citizen of India from 20th December 1961. In cross-examination he stated that the reason why it has been stated in paragraph 3 of the written statement of respondent no. 3 that the first respondent became a citizen of India on 20-12-1961 and is still a citizen of India is that he became a citizen of India under the Goa, Daman and Diu (Citizenship) Order 1962 and that the declaration that respondent no. 1 made under «the Order» was on the advice and at the instance of the then Special Adviser, Goa on behalf of the Government of India, for reasons connected with affairs of State and as such the said declaration (P. 3) was not voluntarily made and had no effect on the status of the respondent no. 1 as an Indian citizen. Patel however added that the answer contained in the last sentence was given by him on the basis of the official records. He also stated that the written statement was based on records which were connected with affairs of State. He stated, based on the information derived from official records, that the declaration signed by the first respondent was on behalf of the third respondent, the Union of India. He stated that the advice given by the then Special Adviser, Goa, on behalf of the Government of India was given for reasons connected with affairs of State. Patel was asked by Shri Bhandare why respondent no. 1 was treated as a foreigner in certain letters and documents produced in court and the reply was that that was done to avoid any complications as the first respondent held a Portuguese passport for reasons connected with affairs of State and that the granting of residential permits were made on behalf of the third respondent with a view not to embarrass the first respondent. Shri Bhandare asked Patel whether it was only on the strength of the documents not produced that the Government holds that the declaration retaining Portuguese nationality was filed by respondent no. 1 on the advice and at the instance of the Special Adviser on behalf of the Government of India and Patel replied that it was on the strength of the records produced and not produced. The evidence of Patel which is based on the records not produced by him was challenged by Shri Bhandare. It seems to me that Shri Bhandare's objection must be upheld.



44. I have discussed the entire oral evidence regarding the secret mission and the fact as to whether P. 3 was signed by respondent no. 1 intentionally. The mission was secret and apart from respondent no. 1, Handoo and a few top Government officials, no one was in a position to know whether such mission had been assigned to respondent no. 1 or not. The existence of the mission was challenged by the petitioner not on concrete data or definite basis but on surmises. The case of the petitioner is that the oral evidence regarding the secret mission and the alleged lack of volition on the part of respondent no. 1 in signing P. 3, was full of absurdities and that there were also some contradiction. It cannot be gainsaid that there are minor contradictions but they are unimportant and somewhat natural. The existence of such contradictions rather strengthens the credibility of the testimony of the witnesses than weakens it. It is argued by the petitioner that the respondent no. 1 had many pro-Portuguese friends and pro-Portuguese leanings, that his sole aim in retaining Portuguese passport was to visit Portugal on account of his entanglement with a Portuguese lady and to look after his interests in Portugal, Angola and Mosambique; that at that time it was not possible for Goans holding Indian passport to enter Portugal. None of these contentions, however can be supported by the record. Apart from some vague opinion and surprise of some police officer there is nothing to show that respondent no. 1 had lands or other financial interests in Portugal or her colonies. Respondent no. 1 denied a suggestion made in that regard in the cross-examination. The petitioner contends that the secret mission was not at all mentioned in the written statement, and was for the first time mentioned in Court. Respondent no. 1 has explained that he stated this fact in the written statement in a guarded manner because the mission being secret he thought he would not be justified in disclosing it more clearly than he did and that he made a full disclosure about the existence of such mission when he found that Government of India themselves had disclosed the existence of the secret mission in the written statement filed by them. Respondent no. 1 did state in paragraph 4 (b) and (c) that P.3 was not a valid declaration in as much as he did not choose to retain his Portuguese nationality; that the declaration was made at the request of the then Special Officer, for reasons which had no connection whatever with any intention to retain Portuguese nationality or citizenship, or to lose Indian citizenship; that the only intention in making P. 3 was to retain the passport and not the Portuguese nationality or to renounce the Indian nationality; that the Special Officer knowing of this intention conveyed to respondent no. 1 that he could make the declaration P. 3. The petitioner states the facts:—that no special training was given to respondent no. 1 for sending him on secret assignment, his academical qualifications being only matriculation, that his age was only 23, that he was a freedom fighter who worked against the Portuguese before Liberation, that the exit and re-entry permit mentions only two countries and not others, that the secret mission was nowhere mentioned in the Government correspondence now before the Court, that the Government of Goa was not informed about the secret mission inspite of frantic inquiries and crash wireless messages regarding the issue of citizenship, that the assignment was mainly against Portugal and yet Portugal was not visited, that the expenses were shared by respondent no. 1 and Government though respondent no. 1 stated that the issue of sharing did not arise, that the Government paid respondent no. 1 in foreign currency in cash in Goa and was reimbursed in Indian currency, that the persons who handed over money to respondent no. 1 in foreign countries were not known to respondent no. 1, that persons in foreign countries who delivered messages to respondent no. 1 were connected with the secret work, that respondent no. 1 does not remember even a single name of the friends in Portugal, that respondent no. 1 admits that accounts were given to the Government but no copy was maintained; that the mission to all countries was secret, and that messages received from Portugal were delivered to respondent no. 1 in London by word of mouth; are facts that show that the alleged secret mission was absurd. I have considered all these facts which according to the petitioner indicate that the secret mission was an absurdity. It seems to me that the fact that respondent no. 1 did not visit Portugal goes a long way to show that besides his desire to visit Portugal there was other work that respondent no. 1 had to perform during his visit abroad. It is common ground that respondent no. 1 was to go to Portugal to settle some private affairs there. It is evident that the connection of respondent no. 1 with some work which was against the interests of Portugal made the visit or respondent no. 1 impossible inspite of the fact that respondent no. 1 had a Portuguese passport. This is definitely a pointer to the fact that res-

pondent no. 1 was abroad on a secret errand given by the Government of India whose relations with Portugal were at that time extremely strained because of the recent Liberation of Goa. The petitioner contends that it would be absurd to send a freedom fighter on a secret mission. By advancing this argument the petitioner admits that respondent no. 1 was freedom fighter and that also is the case of respondent no. 1. Handoo supports respondent no. 1 on this point. It appears to me quite logical that a freedom fighter whose allegiance to India could not be questioned and who had an ostensible reason to go to Portugal would be the most suitable person to go to Portugal on a Portuguese passport. His ostensible retention of Portuguese citizenship and passport would hoodwink the Portuguese. The petitioner's admission that respondent no. 1 and the Government were sharing the expenses of secret mission pre-supposes the existence of the secret mission and therefore the sharing of the expenses cannot render the secret mission absurd, but quite on the contrary it confirms that the mission existed. It came to light in the course of the cross-examination of respondent no. 1 that he had started building a Coca-Cola Factory in Goa even before he left Goa in April, 1962 and judging by the time the factory took to be built, it appears that the factory is of considerable size and a lot of investment was made in it by respondent no. 1. This fact indicates that the intention of respondent no. 1 was to continue to stay in Goa and such continuation of stay is in consonance with his case that he had no intention to lose his Indian citizenship. It is the case of the petitioner that the secret mission was connected by respondent no. 1 and 3 acting in collusion, but the petitioner has by his application dated 29-7-1971 withdrawn all the allegations made against respondent no. 3 when he sought to drop this respondent. The petitioner cannot therefore be heard to say that there was a collusion between respondents 1 and 3.

45. In the light of the analysis I have made of the oral evidence on record regarding the secret mission and looking at the whole question on a broader perspective, the facts which according to the petitioner render the secret mission an absurdity assume almost negligible importance.

46. The power of Handoo to ask the respondent no. 1 to go on a secret mission and to retain his Portuguese passport was challenged by the petitioner. In this regard respondent no. 1 has stated in the course of his cross-examination that Handoo had told him that he was acting under Government instructions whenever he was giving instructions to respondent no. 1 regarding his passport and citizenship; that he never had any reason to doubt the power of Handoo to give such instructions; that he has not ascertained from Handoo what was his power in regard to the retention of Portuguese passport or granting of Indian citizenship. Handoo has stated that from 1955 to 1958 he was an Officer on Special duty in the Ministry of External Affairs dealing with foreign intelligence and security and also foreign security in relation to Goa; that from 1958 to 1960 he was posted as Commandant of the Central Police College at Mount Abu in the State of Rajasthan, that while he was in Mount Abu he was given special charge of the files of Goan affairs to make a special study thereof as he was to take over as Additional Inspector General and Commandant of Border Security Force of Goa, Daman and Diu in November, 1960; that that was the reason why he was intimately interested in Goan affairs; that in November, 1960 he was appointed Additional Inspector General of Police of Maharashtra and Commandant of Border Security Force of Goa, Daman and Diu; that he held this appointment from November, 1960 to December 1961 when he was posted as Special Adviser to the Military Governor of Goa, Daman and Diu that he was competent to ask respondent no. 1 to retain his Portuguese passport and proceed on top secret mission; that he was appointed as Special Adviser to the Military Governor and later on to the Lieutenant Governor by the Government of India who had issued an appointment order which contained his powers and functions. When Handoo was asked what he meant by the words, «I was competent to ask respondent no. 1 to retain his Portuguese passport and proceed on top secret assignment», he replied that he meant that he had the authority of the then Foreign Secretary in the Ministry of External Affairs of Government of India to suggest the retention of the Portuguese passport by the respondent no. 1 and give him the secret assignment on which he was later sent. He admitted that he did not have any written authority from the then Foreign Secretary, Shri M. G. Desai who is now dead. When he was asked whether he had anything to show that he had such authority, besides his word, Handoo replied



that «he would not know». To a suggestion made to him that he had no authority to suggest to the respondent no. 1 to retain Portuguese passport and to proceed on top secret assignment he replied that the suggestion was completely incorrect. When he was asked whether he was officially appointed by the Government after November, 1962 in relation to the security of Goa, he replied that he was not holding any official position after November, 1962. An important piece of evidence that shows that Handoo had the power in regard to passport is P. 4. He accepted that letter which was addressed to him and endorsed therein a direction to the Special Officer M.E.A. who was in charge of passports and who complied with the direction of Handoo.

47. I have now to discuss the documentary evidence regarding the secret mission and the legal effect of P. 3. However, before I do that I would like to consider the documentary and oral evidence regarding the contention of the petitioner that the continued holding of the Portuguese passport by the respondent no. 1 after his return from abroad in October 1962 indicates that the respondent no. 1 did not retain his Portuguese passport because of the secret mission, but because he wanted to retain his Portuguese citizenship to settle abroad.

48. It is true that in Exh. P. 12 respondent no. 1 stated that he wanted to remain in Goa for six months under his Portuguese passport as he was thinking of settling abroad. However, in the next sentence he stated that if at the end of that period he had decided to remain in India, it was his intention to give up his Portuguese passport. He also stated in P. 12 that he did not believe that it would be possible for him to do all the things that he intended doing if he had settled abroad, if he had carried an Indian passport. He further stated that if he had settled abroad, the work that he had in mind would involve travelling in Portugal, Angola and Mozambique. These statements must be read in the context of the case of the respondent no. 1 and of the copious evidence in support of that case, a part of which I have already discussed.

49. P. 12 was the first statement respondent no. 1 made after his return from abroad for the purpose of obtaining a permit to stay in Goa. When he made another application on 5-4-1963 (P. 15) to extend his stay for a further period, he stated that his permanent address was in Campal, Panjim, Goa, that he had returned to be with his family and that the reasons for his extending his stay were for retaining Portuguese passport for one trip in October, his intention being to apply for an Indian passport on return. These statements are in consonance with the case of the respondent no. 1 that he continued to retain his Portuguese passport after he returned from abroad, under instructions from Handoo with a view to undertaking one more trip for the purpose of carrying out the secret mission. On the statement P. 15, the Deputy Secretary, Home wrote to the Secretary to the Government of India, M.H.A., stating that respondent no. 1 intended to surrender his Portuguese passport after his return; that he was engaged in building a factory of cold drinks in Goa; that there was nothing adverse against him and that there was no objection in granting him stay up to October, 1963. On the 15th October, 1963, respondent no. 1 made another application for extension of stay in India (P. 22) stating therein that his permanent address was Campal, Panjim, Goa; that he had returned to be with his family; that he is retaining his passport for one trip originally planned for October and that his intention is to apply for Indian passport on his return. On 25-4-1964 the respondent no. 1 was given a notice by the Registration Officer to show cause why he should not be prosecuted for contravening the provisions of the Foreigners Act and Rules (P. 28). By Exh. P. 30 dated 29-4-1964 the Registration Officer warned respondent no. 1 that he could not continue to stay without registration. In spite of these warnings respondent no. 1 was not prosecuted for reasons which apparently strengthen the case of the respondent no. 1 and his claim to Indian citizenship is not out of place.

50. The documentary evidence which I have considered above regarding the point raised by the petitioner on the basis of the retention by him of the Portuguese passport is in accordance with the oral evidence which I shall presently consider.

51. Respondent no. 1 has stated that whatever was done by him in connection with the holding of a Portuguese passport until 15-1-1964 or in connection with its use was done on instructions from Handoo on behalf of the Government of India; that when he returned from abroad in October 1962

he had no personal reason for holding the Portuguese passport; that on Handoo's instructions he followed all formalities such as applying for residence permits and doing whatever was necessary for getting the permission renewed; that his statement dated 23-11-1962 made before the Police at Panjim was made because Handoo told him to take the position that he was uncertain as to whether he would remain in Goa or go abroad and also as to whether he should return the Portuguese passport in the event of his going abroad; that the idea was that he should take the position that if he had gone abroad he might retain his Portuguese passport; that the idea as conveyed to him by Handoo was that he should take the position that if he went abroad he might retain his Portuguese passport and that if he remained he would not retain Portuguese passport; that Handoo told him that this was the position that would enable him to get a residence permit here without attracting attention and at the same time would enable him to hold the Portuguese passport without attracting attention of the Portuguese Government. In his cross-examination he stated that the ostensible reason why he retained the Portuguese passport after his return was that he was undecided whether he would settle here or abroad, but that the real reason for his retaining the Portuguese passport was an assignment given to him in official confidence of which the details are in secret files of the Government; that the last instructions he took from Handoo were when he told him to return his passport on 15-1-1964; that he did not remember whether the instructions that he would be able to make a trip later and that he should continue to retain Portuguese passport and that he should comply with formalities and take due precautions, were given to him in his first or second visit to Handoo after his return from abroad; that the written part of the instructions regarding the mission was given at one sitting; that the oral part of the instructions was given in two sittings; that he did not remember when the advice to continue to retain the Portuguese passport, complying with formalities and taking due precaution was given to him by Handoo; that he did not remember whether they were given to him at the first or the second meeting; that the advice was given to him in one of these two meetings; that thereafter Handoo never advised him to go to Portugal; that whatever applications he made after he came to Goa were made for complying with the formalities and keeping up the pretence that he was a Portuguese citizen.

52. On the question that I am presently discussing the testimony of Handoo is that under instructions from him, respondent no. 1 on his return from abroad, contacted him at Panjim; that he instructed respondent no. 1 to retain his Portuguese passport till such time as he had decided to use him again or ask him to relinquish it; that respondent no. 1 retained his Portuguese passport till such time as he asked him to relinquish it; that he asked him to relinquish it sometime in December, 1963 or January 1964; that he asked respondent no. 1 to retain his Portuguese passport in order that he could comply with the assignment that was given to him; that respondent no. 1 applied for a residence permit after his return from abroad in 1962 under his instructions as he desired that respondent no. 1 should retain his Portuguese passport. In his cross-examination he was asked by Shri Bhandare why the formality of applying for residential permit by respondent no. 1 was necessary after his return to Goa and he replied that it was necessary to guard the top secret assignment that he was on. He was again asked by Shri Bhandare whether he remained on top secret mission after his return from abroad and the reply was in the affirmative. Shri Bhandare again asked Handoo why was respondent no. 1 required to keep a Portuguese passport after his return to Goa and the answer was that it was to guard the top secret assignment against disclosure.

53. I have considered the entire evidence on record and the demeanour of the respondent no. 1 in the witness box. His clear, unhesitating and firm answers have impressed me as to their truthfulness. He was subjected to a lengthy and searching cross-examination which lasted for 11 days and this afforded respondent no. 1 an opportunity of giving minute details about his activities whilst performing the secret mission which details were not controverted. Instead of weakening the evidentiary value of his testimony the cross-examination fortified it. It is on record that the father and uncle of the respondent no. 1 hold pro-Indian views. That respondent no. 1 comes from well-to-do-families and that there was nothing found against him by the investigation made by the C.B.I. He is a member of the House of the People for over 5 years. I see therefore no reason why his testimony should not be accepted.

54. As for Shri G. K. Handoo, I find that he is a completely independent witness. He was occupying high positions under the Government of India and was entrusted with the very responsible assignment of advising the Military Governor and the Lieutenant Governor in the critical days that succeeded the Liberation of Goa, Daman and Diu from Portuguese domination, on special matters, which obviously included political and other important affairs. A person who had been worthy of such trust on the part of the Government of India is to my mind worthy of full credit.

55. It appears to me that the evidence up to now discussed was by itself sufficient to fully support the case of respondent no. 1. There are, however, on record documents of extremely great evidentiary value which I shall proceed to consider.

56. The first relevant document is Exh. P. 4. In view of its importance it would be convenient to reproduce it here:—

CAMPAL

PANJIM

27TH April, 1962.

CONFIDENTIAL

MR. G. K. HANDOO  
SPECIAL ADVISER  
GOA.

DEAR MR. HANDOO:

Confirming my call on you this morning, I, as agreed, write to advise you that I wish to retain my Portuguese passport No. 703/58 issued at Goa for the present, to enable me to visit Portugal and see a very personal friend on a highly personal reason. I request that permission be granted for me to leave India on this passport, and would appreciate a re-entry permit valid for six months being granted at the same time. I am, as advised by you, registering my passport at the Police, and I shall be seeing you to hand over this letter immediately after.

With compliments,

Yours sincerely

Sd/- Erasmo de Sequeira

No. SA/76/62

dt. 30-4-1962.

Please see. I had spoken to you about this. The applicant has to go back to Portugal with reference to his entanglement with a white Portuguese lady and has to finally settle their domestic issue and return. He will then take over an Indian passport which could be issued as he will renounce Portuguese Nationality. Please issue him a re-entry permit as desired at «A» above.

Sd/- Illegible

23-4.

The main contention around P. 4 is that it was written by respondent no. 1 not to record down an agreement with Handoo regarding the retention of the Portuguese passport, as contended by respondent no. 1, but for the purpose of obtaining a re-entry permit. Shri Bhandare argues that the words «as agreed» do not relate to the retention of the Portuguese passport but to the obtaining of a re-entry permit. However, a plain reading of the letter does not support the argument of Shri Bhandare. It is evident from the letter that respondent no. 1 called on Handoo in the morning of the day on which the letter was written and that there was some agreement between them. The re-entry permit was formally being issued by the Special Officer, M. E. A., though, as it appears from the letter, instructions for that purpose were ordinarily given by Handoo. If the call in the morning and the agreement that took place at that time was about the re-entry permit, there was no need whatsoever to record the fact that an agreement had taken place between the respondent no. 1 and Handoo. Neither was it necessary that an agreement should be entered into for the purpose of obtaining a re-entry permit. A request would suffice, and Handoo could on such request, even if it were merely oral, issue instructions, written or even oral, to the Special Officer to grant a re-entry permit to respondent

no. 1. Neither can it be said that the retention of the Portuguese passport by respondent no. 1 had to be informed to Handoo for the purpose of obtaining a re-entry permit or otherwise. A person holding an Indian passport does not require a re-entry permit and the fact that the re-entry permit was asked for indicates that the respondent no. 1 was holding a foreign passport and intended to travel on it. In view of these facts, and of the fact that respondent no. 1 had at the outset placed on record in P. 4 the fact that he had a meeting with Handoo in the morning of 27-4-1962, the agreement referred to in P. 4 appears to be an agreement to retain the Portuguese passport. It is true that the respondent no. 1 states in P. 4 that the Portuguese passport is retained to enable him to visit Portugal and see a very personal friend for personal reasons, but this fact is easily explained if the existence of the assignment to respondent no. 1 of a top secret mission is accepted. As it appears from the record, the ostensible reason for retention of the Portuguese passport was the visit of respondent no. 1 to Portugal to see a personal friend of his. Respondent no. 1 also stated in the letter that he was registering his passport at the Police on the advice of Handoo. This fact was admitted by Shri Bhandare whilst cross-examining Handoo. P. 4 ends with the following statement: «I shall be seeing you to hand over this letter immediately after». It is unusual for a person to state in a letter that he would be seeing the addressee of a letter to hand over the letter. It appears from this latter fact that the handing over of the letter was also part of a deal entered into between Handoo and the respondent no. 1 and that the letter was written for placing down on record the existence of such deal, in order not to jeopardize the claim of respondent no. 1 to Indian citizenship. As we have seen, the oral evidence in this regard, given by both, the respondent no. 1 and Handoo is that the draft of the letter P. 4 was given by Handoo and the letter was written on his instructions and that the purpose of the letter was to safeguard the citizenship rights of respondent no. 1. If the intention of the respondent no. 1 had been to retain his Portuguese passport and to register it, there would be no need to place on record that the passport was being retained and that its registration was being done. In the note written below the letter, by Handoo and addressed to the Special Officer, Handoo states that he had spoken to the Special Officer about the letter and that the respondent no. 1 would on his return take over an Indian passport which could be issued as he would renounce Portuguese nationality. These observations made in the note indicate that the agreement and the advice referred to in the letter had some connection with the retention of Indian nationality by respondent no. 1 and the acquisition by him of an Indian passport. It was urged before me by Shri Bhandare that in his note Handoo speaks about the renunciation of the Portuguese nationality by respondent no. 1 and that Handoo has stated in his cross-examination that the purpose of writing the note was exactly as had been indicated in the note and that therefore the utmost that can be said about P. 4 is that respondent no. 1 and Handoo agreed that respondent no. 1 should retain his Portuguese nationality and passport and thereafter renounce his Portuguese nationality and acquire Indian nationality. In the course of his cross-examination respondent no. 1 had stated that the remark of Handoo in P. 4, that he would renounce his Portuguese nationality was not correct. He also repeatedly stated throughout his deposition that he had never applied to obtain Indian citizenship and that he has all along claimed to have Indian citizenship. The petitioner himself never challenged this position. Quite on the contrary he stated that the Government of India granted to the respondent no. 1 two Indian passports and two Indian Diplomatic passports without the respondent no. 1 making any application for renouncing Portuguese citizenship or obtaining Indian citizenship. It must also be remembered that Handoo had stated in his deposition that the Special Officer was not informed about the secret mission. In his note addressed to the Special Officer, he stated that an Indian passport could be issued to the respondent no. 1 on his return, presumably because of the agreement that transpires from P. 4. Handoo had to give some ostensible reason why an Indian passport should be issued to respondent no. 1 on his return and this appears to be the reason why he informed the Special Officer that respondent no. 1 would renounce his Portuguese nationality. He could not inform the Special Officer that the retention of the Portuguese passport by respondent no. 1 was fake, since he had not taken the Special Officer into confidence regarding the secret mission. Handoo had therefore to inform the Special Officer that Indian passport could be given to respondent no. 1 on his return «as he would renounce his Portuguese Nationality». It is pertinent to note in this regard that Handoo stated in his evidence that

«his intention to issue the instructions contained in the note was to make quite sure that respondent no. 1 and his Indian Citizenship rights should in no way be jeopardized». P. 4 has to be considered along with the other evidence on record, oral as well as documentary and not isolatedly. If so considered, the fact that Handoo mentioned in his note that the respondent no. 1 would renounce his Portuguese nationality is not so important as the fact that he mentioned in his note that the respondent no. 1 could take over an Indian passport on his return.

57. The animus revertendi of the respondent no. 1 can easily be seen through the contents of P. 4, the various applications he made to continue his stay in India, his refusal to leave this country inspite of threats of prosecution, the construction of a large factory in Goa, the holding of Indian citizenship by the other members of his family, etc.

58. Exh. P. 5 is the exit and re-entry permit. It appears from this exhibit that the permit was given as a special case and it is argued on behalf of respondent no. 1 that the fact that he was treated as a special case gives some indication, in the context of things, that the claim of respondent no. 1 to Indian citizenship was not out of place.

59. Exh. R.6 is the letter dated 18-1-1963 written by respondent no. 1 to the Special Officer informing him that he was retaining his Portuguese passport notwithstanding the insertion of Clause 3A in Schedule III to «the Rules» and that that information was being given to the Special Officer to enable respondent no. 1 to obtain his Indian passport in due course. It is evident from this exhibit that respondent no. 1 reiterates his claim to Indian passport and consequently to Indian citizenship and that respondent no. 1 did not feel that application for Indian citizenship and passport as necessary.

60. Exh. P.31 is the letter which respondent no. 1 wrote to the Special Officer, when he was asked by the Registration Officer to get himself registered as a foreigner and was threatened with being prosecuted for want of such registration. In P.31 respondent no. 1 states that he would appreciate that the Special Officer should advise the Registration Officer «that respondent no. 1 was an Indian citizen» so that the matter might be cleared up as far as his registration as a foreigner was concerned.

61. In Exh. P.33 respondent no. 1 requests the Under Secretary, Home, who was then also the Special Officer to arrange for his «claim to Indian citizenship to be accepted» as early as possible. On receipt of P.33 the Special Officer referred the matter to the S.S.P. for investigation. The S.S.P. recorded down the statement of respondent no. 1 and thereafter wrote (P.38) to the Special Officer to say that there seemed to be no objection to grant Indian citizenship to respondent no. 1. On the 24th August, 1964 the Chief Secretary by his letter (Exh. P. 39) wrote to the Under Secretary, Government of India and solicited instructions as to whether respondent no. 1 could be considered «to have become an Indian citizen» immediately after the surrender of his passport without undergoing the process of registration etc. required under «the Rules». The Under Secretary, Government of India by his letter dated the 2nd December, 1964 (Exh. P. 40) replied to the Chief Secretary to say that he was directed to state that on the information furnished by the Chief Secretary there is no objection to respondent no. 1 «being treated as an Indian citizen under «the Order». On the basis of P. 40 which was written by the Under Secretary, Government of India, under directions, which in ordinary course must be presumed to have given by an Officer of the Government of India authorised to give such directions, the Under Secretary of the Goa Government informed respondent no. 1, with reference to his request, that his «claim to Indian citizenship» be accepted that he was directed to state that the respondent no. 1 had prima facie become a citizen of India by virtue of «the Order». A copy of this letter (Exh. P. 41) of the Under Secretary of the Goa Government dated the 15th December, 1964, was sent to the S. S. P. in reply to P.38, with a request to cancel the registration of respondent no. 1 as a foreigner, in view of the Government instructions «to treat him as a citizen of India».

62. On the 23rd February, 1965, the Government of Goa, Daman and Diu issued to the respondent no. 1 a passport bearing no. 176798 (Exh. R.1).

63. These five documents, namely Exhs. P.31, 33, 39, 40 and 41 require no comments. They speak volumes and are clear

evidence that the Government of India had always held that respondent no. 1 never ceased to be an Indian national. P.41 whereby the Government of India certifies that prima facie respondent no. 1 became a citizen of India by virtue of «the Order» and the passport R.1 were issued by the Government of India after the respondent no. 1 signed the declaration P.3, renewed his passport in London in 1962 and continued to hold it after 19th January, 1963, notwithstanding Clause 3A inserted in Schedule III to «the Rules». This obviously shows that Government of India had very good reasons to by-pass these three facts and in the absence of any suggestion made or justification given by the petitioner as to the reasons why Government of India acted in that manner, I am bound to accept the only plausible explanation given by the respondent no. 1 that all the aforesaid documents were signed and certificates issued because respondent no. 1 had signed P.3 involuntarily for the sole purpose of carrying out the secret mission regarding affairs of State. I have to conclude that the Government of India was aware that respondent no. 1 wanted to maintain his Indian citizenship, and that he signed P.3 unintentionally, at the request of Handoo acting on behalf of the Government for the purpose of going abroad in connection with affairs of State.

64. It is contended by Shri Bhandare that when P.41 was issued to respondent no. 1 the Government of India was not aware that respondent no. 1 had signed P.3 because the Government of Goa had, in collusion with respondent no. 1, suppressed from the Government of India, the fact that P.3 had been signed by respondent no. 1. This argument based on collusion has to be rejected because the petitioner has withdrawn all the allegations made against respondent no. 3 i.e. «the Union of India by the Administrator of the Union Territory of Goa, Daman and Diu». Under Section 3(a) of the General Clauses Act, the Central Government, in relation to the administration of a Union Territory, includes the Administrator thereof and this is the reason why the petitioner has referred to the respondent no. 3 as «Union of India, by the Administrator of the Union Territory of Goa, Daman and Diu». The withdrawal of the allegations regarding collusion against the respondent no. 3 includes such withdrawal against the Administration of Goa, Daman and Diu. In paragraph 3(n) of his petition the petitioner states that P. 41 was, to the knowledge of the third respondent, false and erroneous and contrary to the documentary evidence in their possession. The expression «erroneous and contrary to the documentary evidence in their possession» might have been used by the petitioner to express the fact that P.41 was issued inspite of the knowledge of the respondent no. 3 that respondent no. 1 had renewed his Portuguese passport in London and had continued to retain it beyond 19th January, 1963, inspite of Clause 3A of the Schedule III to «the Rules». But the word «false» used in paragraph 3(n) appears to indicate that respondent no. 3 had also the knowledge that P.3 had been signed by respondent no. 1. In fact, respondent no. 3 ought to have and indeed had the knowledge that P.3 had been signed by respondent no. 1. I say so because the respondent no. 3 knew that respondent no. 1 had left India on a Portuguese passport and had renewed it in London in 1962. A Portuguese national could hold at that time a Portuguese passport without signing a declaration like P.3, but he had necessarily to sign such a declaration if he were to «travel» on such passport. Respondent no. 3 therefore had constructive knowledge not only that respondent no. 1 had signed P.3, but that he had registered his Portuguese passport with the Registration Officer and had also registered himself as a Portuguese national. I say that respondent no. 3 in fact had the knowledge that respondent no. 1 had signed P.3, because when in 1969 the Goa Administration re-raised the subject of the citizenship of respondent no. 1, the Goa Administration informed Government of India that P.3 had been signed by respondent no. 1 and yet, Government of India reiterated the stand that respondent no. 1 was a citizen of India by virtue of «the Order». Besides, the petitioner has averred in paragraph 3(n) of his petition that the Administration of Goa, Daman and Diu having «knowledge» that respondent no. 1 had signed P.3, had, for reasons best known to the Administration, issued P.41 to respondent no. 1. Now, the Administration of Goa, Daman and Diu is a part of the Central Government and is included in it. Therefore the «knowledge» of the Administration amounts to the «knowledge» of the Central Government and the Central Government is deemed to have had «knowledge» that P.3 was signed by respondent no. 1. What I said about the word «knowledge» in paragraph 3(n) applies to the expression «for reasons best known to them» occurring in the said paragraph. The petitioner is correct when he says that P.41 was issued to respondent no. 1 for reasons best known to them i.e. to the Goa Administration and therefore to the Central Government.



65. It is argued by Shri Bhandare that from P. 40 it can safely be inferred that P. 41 was issued from information furnished to the Government of India by letter P. 39 and that P. 39 makes no reference to P. 3. In view of what I have already stated this argument does not survive. For similar reasons and because the fact of mis-representation is not alleged in the petition, I have also to reject the contention that P. 41 was obtained by mis-representation.

66. In 1969 the question of the citizenship of respondent no. 1 was revived. A wireless message (P. 43) was sent on 3-7-1969 by the Chief Secretary to the Additional Secretary, Government of India, M. H. A., stating that respondent no. 1 had made the declaration P. 3. The wireless message was followed on the next day by a most immediate letter (Exh. P. 44) forwarding a long note regarding the citizenship of respondent no. 1, a photostat copy of P. 3 and a copy of the wireless message. Significantly enough P. 4 which, Shri Bhandare admits, ought to have been in the same file in which P. 3 and other papers regarding the citizenship of respondent no. 1 were kept, was not sent along with P. 44. P. 4 was not sent until it was called for by the Government of India. On 26-7-1970 the Joint Secretary, Government of India, M. H. A., wrote a letter (Exh. P. 52) to respondent no. 1 stating that with reference to the correspondence about the «claim of Indian citizenship» by respondent no. 1, the matter had been reconsidered by the Government and that it had been decided that the matter should be treated as closed. On 27-7-1970 respondent no. 1 wrote to the Joint Secretary, Government of India, a letter (Exh. P. 53) stating that while the Government of India had continued to accept him as a citizen of India and had closed the matter, it was possible that the question may be raised sometime in future and that, therefore he requested that the citizenship certificate under Section 13 of «the Act» be issued to him. On 27-7-1970 the Joint Secretary replied to respondent no. 1 that since the Goa Administration had already informed him by P. 41 that he had *prima facie* become a citizen of India by virtue of «the Order», the necessity of a certificate under section 13 did not arise. On 24-10-70 whilst the question of the citizenship of respondent no. 1 was being agitated anew by the Government of Goa, the Goa Government issued to respondent no. 1 an Indian passport bearing no. 935474 (Exh. R. 2). On 17-8-71 the Government of India issued to respondent no. 1 an Indian Diplomatic passport bearing no. D 011096 and the respondent no. 1 has stated in his deposition that in December, 1971 he was asked by the Government during the war to stand by to go to the United Nations and that at that time another Diplomatic passport was issued to him which he did not collect because it did not become necessary to go.

67. No explanation was given by the petitioner as to why Exhibits P. 52 P. 53 and R. 3, were issued except that the Government of India was in collusion with respondent no. 1 and that these exhibits P. 52 and R. 3 were issued in contravention to the provisions of law. I accept the argument of respondent no. 1, that P. 52 and R. 3 were issued for the same reasons for which P. 40 and P. 41 were issued, which reasons I have already mentioned above.

68. It is further contended by Shri Bhandare that the fact that respondent no. 1 signed P. 3 because of the secret mission does not imply that P. 3 was not signed by respondent no. 1 voluntarily. Shri Bhandare argues that the respondent no. 1 willingly accepted the secret mission and was even prepared to sacrifice his life and that therefore respondent no. 1 must be presumed to have also been prepared to sacrifice his Indian citizenship. It is argued by Shri Bhandare that even if there was an understanding between the Government of India and respondent no. 1 regarding the secret mission and the signing of P. 3, such an understanding is not sufficient to nullify the effect of P. 3 and that the Government cannot consider respondent no. 1 a citizen of India by by-passing the requirements of «the Act», even if they were instrumental in making respondent no. 1 sign P. 3. Shri Bhandare states that by signing P. 3 a certain legal situation was created by respondent no. 1 and that that situation can be corrected only by following the provisions of «the Act» and not by circumventing them; and that the only course open to the Government of India, in view of P. 3, was to grant to the respondent no. 1 citizenship under one of the ways provided by Section 3 to 6 of «the Act».

69. I have already considered both these points in a different context. The argument that, since respondent no. 1 was prepared to sacrifice his life, he must be presumed to have also been prepared to sacrifice his Indian citizenship does not appeal to me. Besides, the assumption of Shri Bhandare that respondent no. 1 was sacrificing his Indian citizenship whilst signing P. 3 indicates that the loss of Indian citizenship

was a sacrifice for respondent no. 1. A sacrifice is a thing done by someone contrary to his liking. This implies that the loss of Indian citizenship and therefore the retention of Portuguese citizenship was not palatable to respondent no. 1. There is a fallacy in the argument of Shri Bhandare, because as far as life was concerned he was «prepared» to sacrifice it, i.e., he was taking the risk to his life, but as far as Indian citizenship was concerned there was no question of his being prepared to lose it or taking any risk about losing it. The question was not contingent upon the happening of any future event, but it was a question of respondent no. 1 losing it outright. When respondent no. 1 agreed to go abroad on the secret mission, he accepted the risk of losing his life, whereas when he signed P. 3 he would forthwith be losing his Indian citizenship, if the signing of P. 3 under such contingency was to have the legal effect that Shri Bhandare argues, it should have. A person who was prepared to sacrifice his life on account of his country would not voluntarily do an act which involved the loss of the citizenship of his country. It would therefore be illogical to say that even if that person had done an act involuntarily the legal consequence of the act should follow. In *Md. Ayub Khan v. Commissioner of Police, Madras and Others* AIR 1965 SCC 1623 the appellant Ayub Khan petitioned the High Court of Madras for a writ of mandamus restraining the Commissioner of Police, Madras, from taking action pursuant to the order of the Government of Madras and from interfering with the appellant's rights as a citizen of India. The appellant claimed that he had acquired the status of an Indian citizen from the commencement of the Constitution. He was served with a notice informing him that as he had obtained a Pakistani passport he should leave India. He applied to the Central Government for affording him an opportunity to prove that he had not lost his Indian citizenship. His application was dismissed, without affording him an opportunity. The High Court held that the appellant «had in fact made a declaration on the basis of which the passport was obtained and the allegations made by him did not even imply that he was forced to make a false declaration». In the view of the High Court Section 9 lays an objective test and when the individual had brought himself within it, the law determines the legal consequences of the situation independently of his intent or understanding and there was no scope for an inquiry of the nature claimed by the appellant. Paragraph 3 of the Schedule to the Citizenship Rules raises a conclusive presumption that a citizen of India who has obtained a passport from a foreign country on any date, has before that date voluntarily acquired citizenship of that other country. By the application of the rule in paragraph 3 the authority must regard the obtaining of a foreign passport on a particular date as conclusive proof that the Indian citizen had voluntarily acquired citizenship of any country before that date. (Ayub Khan obtained his passport on the strength of a declaration). The Supreme Court observed that obtaining of a passport of a foreign country cannot in all cases merely mean receiving the passport; that if the plea is raised by the citizen that he had not voluntarily obtained the passport the citizen must be afforded an opportunity to prove that fact; that a case must be visualized in which on account of fraud or mis-representation he may be induced without any intention of renunciation of his Indian citizenship, to obtain a passport from a foreign country; that it would be difficult to say that such a passport is one which has been obtained within the meaning of paragraph 3 of Schedule III and that a conclusive presumption must arise that he has acquired voluntarily citizenship of that country. The High Court in appeal was of the view that Section 9 laid down an objective test and once it was found that the passport was obtained in fact by an Indian citizen from another country, the law determined the legal consequences of that conduct and no question of his «intention or understanding» arose. The Supreme Court disagreed with this view. According to the Supreme Court if voluntary acquisition of the citizenship of another country determined Indian citizenship within the meaning of Section 9 of Sub-section (1) and by virtue of paragraph 3 of Schedule III to the citizenship Rules the conclusive presumption of voluntary acquisition is to be raised from the obtaining of a passport from the Government of any other country, it would be implicit that the obtaining of a passport was the result of the exercise of free volition by the citizen. This view, the Supreme Court held, is strengthened by the scheme of Section 9(2) read with Rule 30 which contemplates an inquiry by an authority prescribed under Sub-section (2) for determination of the question whether citizenship of another country has been acquired by an Indian citizen. The Court therefore held that the obtaining of a passport was not the implicit result of the exercise of free volition by a citizen and the appeal was therefore allowed. The other case that meets the contention of Shri Bhan-

dare is «K. L. Modi v. Union of India» AIR 1970 Delhi 76». Modi, the writ petitioner in that case, was an Indian citizen doing business in Singapore. In 1959 the political situation in Singapore was such that Modi had either to leave Singapore leaving his entire property and interests there unattended and return to India or to acquire Singapore citizenship. Compelled by these adverse circumstances, according to Modi's averment, he involuntarily acquired the citizenship of Singapore, but he never relinquished Indian citizenship, nor had he the intention to do so. Throughout his stay in Singapore he had animus revertendi in relation to India which continued to be his home. In 1959 Modi wanted to come to India to stay here for sometime with his family members, but he was told that, by virtue of his Singapore citizenship, he could not leave Singapore without obtaining a Singapore passport, with the result that he was compelled to obtain a Singapore passport. The averment that the obtaining of the foreign passport in question was involuntary was denied, when he came to India on 4-3-1967 he was detained and deported without any reasons being assigned. The case of the Government was that on Modi's getting himself registered as a citizen of Singapore, he ceased to be an Indian citizen by virtue of Section 9(1) of the Act; that the fact that Modi still held a Malaysian passport supports the plea that Modi had relinquished Indian citizenship; that the Indian citizenship automatically terminated under Section 9(1) of the Citizenship Act the moment Modi acquired Singapore citizenship by registration; that the fact that the petitioner visited India on several occasions is irrelevant because a foreigner can also visit India on a valid passport. Modi relied on AIR 1965 S. C., which I have just now considered. «Government of Andhra Pradesh v. Sayed Md. Khan» AIR 1962 SC 1778 was also relied upon. A similar contention was raised by the Government in AIR 1962 S. C., that as soon as it is shown that a person has acquired a passport from a foreign Government his citizenship of India automatically comes to an end and that in such a case it is not necessary that the Government should hold an inquiry and make a finding. (It must be remembered that a passport cannot be obtained unless a person is a citizen of the country of which the passport was issued). The Supreme Court negatived these contentions and opined that they were clearly misconceived. Therefore in Modi's case the Delhi High Court held that the acquisition by a person of a foreign passport did not permit the Government to come to the conclusion that that person was a foreign citizen without making an inquiry whether the foreign citizenship was acquired voluntarily, when the plea that it was acquired involuntarily, was raised by the person. I have already discussed how the secret mission has affected the volition of respondent no. 1 in signing P. 3 and I have held that the existence of the secret mission was a compelling factor which rendered the signing of P. 3 involuntarily. The question of by passing the provisions of law by Government, alleged by Shri Bhandare, and of a certain legal situation being created on account of P. 3, does not arise. As I have already decided in the earlier part of my judgement, P. 3 is deemed to have no legal effect at all and to create no legal situation; if it is accepted that Government was instrumental in making respondent no. 1 sign P. 3 on account of the secret mission. If P. 3 does not in law exist, no provisions of law can be said to have been bypassed by Government whilst issuing P. 40, P. 41, P. 52 and R. 3.

70. The case of the petitioner is that when there was a split in the Congress in 1969 and the members of the Parliament were divided, the Ruling Party was not in absolute majority after the split and therefore the support of respondent no. 1 was sought; that respondent no. 1 was in the beginning reluctant to give his support to the Congress Party because the policies of the United Goans were close to that of the Swatantra Party; that because respondent no. 1 was reluctant to give his support P. 3 was shown to him and he had to agree to support the Ruling Party; that thereafter he continued to vote with the Ruling Party; that an electoral alliance for elections of the Assembly between the U. G. Party, to which respondent no. 1 belonged, and the Ruling Party was entered into because the Ruling Party brought pressure to bear upon the respondent no. 1 by threatening to expose the nationality of respondent no. 1. The facts constituting the case of the petitioner were put to the respondent no. 1 in the course of cross-examination and they were outright denied. Respondent No. 1 answered that he voted for President Giri because President Giri himself had telephoned to him and that after 1969 and upto the date of his deposition he had sometimes voted against the Ruling Party. There is nothing else on record to substantiate this case of the petitioner. Besides this case no other case was sought to be made out. It was not suggested that Exhs. P. 52 and

R. 3 were issued because of the support of respondent no. 1 to the Ruling Party or because of the electoral alliance.

71. My conclusion is that P. 40, P. 41, P. 52 and R. 3 support the case of the respondent no. 1 and that he signed P. 3 without volition on account of the secret mission.

72. The evidence and the points up to now discussed settle the questions that respondent no. 1 is a citizen under «the Order».

73. Shri Porus Mehta argues that in fact and in law P. 41 read with P. 52 is a citizenship certificate under section 13 of «the Act». The main objection to this argument, raised by the petitioner, is that P. 41 was not signed by a Secretary or a Joint Secretary to the Central Government as required by «the Act»; that there was no certificate issued in accordance with the form prescribed by the Schedule to «the Rules»; that P. 41 was an opinion based on purposeful suppression of facts; that the Goa Government had no powers in the matter of nationality; that even if the Goa Government had powers, P. 41 was not issued in exercise of those powers and that P. 41 does not mention that it was issued under the powers conferred by Section 13 of «the Act».

74. Respondent no. 1 never applied for Indian citizenship. He claimed it as of right. This claim was repeatedly made in various documents of which P. 25, P. 31 and P. 33 are the latest. In these three documents made in the first half of the year 1964 the respondent no. 1 requested the Government to formally accept his claim. By the letter P. 40 the Under Secretary, Government of India, wrote to the Chief Secretary that he was directed to say that there was no objection to respondent no. 1 being treated as a citizen of India under «the Order». It is to be presumed that in the normal course the direction given to the Under Secretary must have been given by an officer of the Government of India authorised to give such direction. The direction was of the nature of a citizenship certificate. Pursuant to P. 40 the Goa Government issued the document P. 41, wherein it is stated by the Under Secretary who signed it that he was directed to say that respondent no. 1 had prima facie become a citizen of India by virtue of «the Order». In Exh. P. 52 the Joint Secretary, Government of India, stated that the matter of the Indian citizenship of respondent no. 1 has been considered by the Government in the light of his representation and that it has been decided that the matter should be treated as closed. In Exh. R. 3 the Joint Secretary to the Government of India states that since the Goa Administration had by Exh. P. 41 already informed the respondent no. 1 that he had prima facie become a citizen of India by virtue of «the Order» the necessity of a certificate under Section 13 does not arise.

75. Shri Porus Mehta argues that the cumulative effect of all these documents is the issue of a citizenship certificate under Section 13. I am inclined to accept this argument. Even if the contention that P. 41 was not a certificate under Section 13 of «the Act», in as much as a Joint Secretary to the Government of India has by Exh. R. 3 endorsed the declaration made in P. 41, P. 41 and R. 3 read together must be deemed to be in substance a certificate under Section 13. The arguments of Shri Bhandare that the Goa Government had no powers to issue a certificate and that even if they had powers they did not use them, does not survive because P. 41 must be read together with P. 52. The rest of the contentions of Shri Bhandare relate to the form. In this regard Shri Porus Mehta relies on «Gordhandas Purshottamdas Sonawala and another vs. the Easter Cotton Company» 1959 SCR 346. In that case, under Section 8(1) of the Bombay Cotton Contracts Act any contract which was not in accordance with the by-laws of any recognized cotton association was void. The blanks in the official contract form, relating to measurements and differences above and below the settlement rates were not filled in. The validity of the contract was challenged. It was held that in the circumstances of the case the official contract form had to be filled in so far as it was practicable and that the omission to fill in the blanks in the contract notes did not spell any departure from an essential or a characteristic part of the contract form and that consequently the legal effect of the contracts was not in any manner changed so as to render the contracts void as not being in accordance with the Bombay Cotton Contracts Act. It appears to me that in the present case also form VI made under Rule 27 of «the Rules» was in its essence adhered to and the legal effect of Exhs. P. 41 and R. 3 is not affected. Strict compliance with technicalities should not be required in view of the

well-accepted principle that an election should ordinarily be upheld and not easily upset.

76. Respondent no. 1 is a citizen of India under «the Order» in view of the fact that no valid declaration was made by him under the proviso to Clause 2 of «the Order». Until 19th January, 1963 there was no bar to an Indian citizen holding a Portuguese passport. Therefore his renewal of the Portuguese passport in London in 1962 does not imply loss of Indian citizenship. His continuation of holding a Portuguese passport after 19th January 1963 might amount to the loss of Indian citizenship had it not been for the compelling reasons which led him to maintain it. The question of loss of Indian citizenship would have to be decided by the Government in view of the provisions of Section 9(2) of «the Act». However, in view of the various documents on record which I have discussed at length, the decision of the Government of India in this regard must be deemed to have been given. I need not therefore refer the question of loss of Indian citizenship to the Government in the present case.

77. I have considered the case of the parties in all its aspects, I discussed the evidence in its minutes details, I have carefully applied my mind to it and I come to the conclusion that the respondent no. 1 was at the material time and continues to be an Indian citizen and was therefore not disqualified to be chosen as a member of the Lok Sabha in March, 1971. In the circumstances the election petition fails.

#### ORDER

The election petition is dismissed. There shall be no order as to costs.

Sd/-

16-3-73.

(TITO MENEZES)

Judicial Commissioner

By order,

B. N. BHARDWAJ

Secretary to the Election Commission of India